

IN THE  
**SUPREME COURT**  
OF THE  
UNITED STATES

---

October Term, 1971

No. 1082

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REUBIN O'D. ASKEW, et al.,  
*Appellants,*

v.

THE AMERICAN WATERWAYS  
OPERATORS, INC., et al.,  
*Appellees.*

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APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF FLORIDA

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AMICUS CURIAE BRIEF  
FOR THE STATE OF WASHINGTON

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**AMICUS CURIAE BRIEF  
FOR THE STATE OF WASHINGTON**

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The State of Washington, by and through its Attorney General, files this Amicus Curiae brief under Rule 42(4) of this Court.

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**STATEMENT OF INTEREST**

All who are acquainted with the State of Washington know that its lifeblood is closely associated with two water bodies (1) the mighty Columbia River—which enters the Northeast corner of the state from British Columbia and snakes through the eastern half of the state until it turns west as the border between Oregon and Washington and dis-

charges at Washington's Southwest corner into the Pacific Ocean; and (2) Puget Sound—a large arm of the Pacific Ocean which flows on tidal cyclic basis deep into western Washington.

The total livability of the state is dependent primarily on the quantity and quality of these waters and their tributaries. Not only are they valuable for navigation, both commercial and recreational, but fish and wildlife use them for homes, food sources and resting areas. They are also of the greatest import for their scenic and aesthetic values. And, in the case of the Columbia, hydroelectric power production and agricultural irrigation uses are most important. It is fair to conclude that the environment of Washington State, including the essential character of its citizens, is determined largely by the condition of the Columbia River and Puget Sound and their associated waters.

Recognizing their importance, the government of Washington State has taken a number of very significant steps to protect these priceless resources. This has been especially true with regard to their quality.

Twenty-seven years ago the Washington State Legislature enacted the state's basic water pollution control act. Chapter 216, Laws of 1945, now codified in Chapter 90.48 RCW. Of utmost importance in 1969 and 1970 the state legislature, having in mind the disastrous Torrey Canyon and Santa Barbara

incidents and the possibility that large quantities of oil might be entering Puget Sound from Alaska's North Slope oil fields, amended the basic act by including new provisions dealing specifically with pollution of water *by oil*. See Chapter 133, Laws of 1969, First Extraordinary Session; and Chapter 88, Laws of 1970, First Extraordinary Session. These amendatory sections, which it is noted were enacted prior to the passage of the federal oil pollution control legislation contained in the Water Quality Improvement Act of 1970; Publ. L. No. 91-224, Sec. 102, 84 Stat. 94, set forth approaches to oil pollution control which were in some substantial respects similar to the Florida Act being reviewed in this case.

The tone of Washington's Act is set forth in RCW 90.48.320 and RCW 90.48.336 which provide in pertinent part:

It shall be unlawful, except under the circumstances hereafter described in this section, for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore whether publicly or privately operated, regardless of the cause of the entry or fault of the person having control over the oil, or regardless of whether it be the result of intentional or negligent conduct, accident or other cause. \* \* \* (RCW 90.48.320)

Any person owning oil or having control over the same which enters the waters of the state in violation of RCW 90.48.320 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry. \* \* \* (RCW 90.48.336)



Other sections of the Act provide for liabilities for "clean-up" costs, a permit system, civil penalties—up to \$20,000 per violation, reporting requirements and a "right of entry." See RCW 90.48.320 et seq. (The state's oil pollution control laws are set forth in total in Appendix A hereof.)

Oil pollution continued on the minds of the state's legislators in 1971 and, as a result, the state's oil pollution control laws were further amended to include such features as the establishment of a "coastal protection fund" to finance oil pollution control activities, and the authority to establish rules and regulations pertaining to "the times, places and methods of transfer of oil" within the state, Chapter 180, Laws of 1971, First Extraordinary Session.

In addition, during the same session the legislature reaffirmed, through the Water Resources Act of 1971—Chapter 90.54 RCW, a policy of high quality for public waters. Pertinent language of RCW 90.54.020 provides as a "fundamental" of state water policy that:

\* \* \*

(3) The quality of the natural environment shall be protected and, where possible, enhanced as follows:

(a) Perennial rivers and streams of the state shall be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict



therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(b) *Water of the state shall be of high quality.* Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of treatment prior to entry. Notwithstanding that standards of quality established for the waters of the state would not be violated, wastes and other materials and substances shall not be allowed to enter such waters which will reduce the existing quality thereof, except in those situations where it is clear that overriding considerations of the public interest will be served.<sup>1</sup> (Emphasis supplied.)

The dominant waters of the State of Washington, such as Puget Sound and the Columbia River and many of their tributaries, are navigable waters in terms of admiralty jurisdiction. *Gilmore and Black, The Law of Admiralty* 28 (1957). Likewise, the state statutes just mentioned apply to these same waters. RCW 90.48.020.

## ARGUMENT

### I. State Oil Pollution Control Statutes Such As Florida's Do Not Conflict With Federal Maritime Law.

This brief is submitted because of a threat to

<sup>1</sup>The legislature's interest in warding off oil pollution threats also caused the inclusion of the following language in the state's "Shoreline Management Act of 1971"—Chapter 90.58 RCW. RCW 90.58.160 provides:

"Surface drilling for oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca seaward from the ordinary high water mark and on all lands within one thousand feet landward from said mark."

the ability of the state to protect its natural resources and to insure, as best the state can, that its environmental future is bright. The lower court in this case has held that Florida's oil pollution control laws are in conflict with federal maritime law. *American Waterways Operators, Inc. v. Askew*, 335 F. Supp. 1241 (U.S.D.C. M.D. Fla. 1971).<sup>1</sup> If such reasoning is upheld, not only will Washington's oil pollution control laws, as just described, come under a large unconstitutional cloud, but its general water pollution control laws as applied to maritime matters as well.

We urge the rejection of any analysis which leads to such a result. This Court long ago recognized the authority of a state to enact legislation dealing with maritime waters to protect its fishery resources. *Manchester v. Massachusetts*, 139 U.S. 240 (1891). See also, *Skiriotes v. Florida*, 313 U.S. 69 (1941). The water and oil pollution control laws of Washington are designed, in considerable part, to protect these same resources.<sup>2</sup> In a similar vein, a Louisiana statute dealing with quarantive regulations pertaining to protection of public health (cholera control) which touched upon admiralty jurisdic-

<sup>1</sup>Florida's "Oil Spill Prevention and Pollution Control Act" is found in Chapter 376, Florida Statutes Annotated: Chapter 70-244, Laws of 1971.

<sup>2</sup>The first section of the state's Water Pollution Control Act, RCW 90.48.010, provides in part:

"It is declared to be the policy of the state of Washington to maintain the highest possible standards to insure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wildlife, birds, game, fish and other aquatic life, \* \* \* ." (Emphasis supplied.)

tion, was upheld in *Morgan's Steamship Co. v. Louisiana Board of Health, et al.*, 118 U.S. 455 (1886). A further example of valid state action in the area of environmental protection is contained in a recent case of this Court upholding an ordinance of the City of Detroit relating to the control of emissions to the air from a ship docked in maritime waters. *Huren Portland Cement Company v. City of Detroit*, 362 U.S. 440, 443 (1960). In the course of its opinion, the Court described the federal-state relationship in the field of pollution control, as follows:

The ordinance was enacted for the manifest purpose of promoting the health and welfare of the city's inhabitants. Legislation designed to free from pollution the very air that people breathe clearly falls within the exercise of even the most traditional concept of what is compendiously known as the police power. In the exercise of that power, the states and their instrumentalities may act, in many areas of interstate commerce and maritime activities, concurrently with the federal government. [Citations omitted.]

The basic limitations upon local legislative power in this area are clear enough. The controlling principles have been reiterated over the years in a host of this Court's decisions. Even-handed local regulation to effectuate a legitimate local public interest is valid unless preempted by federal action, [Citations omitted.] or unduly burdensome on maritime activities or interstate commerce. [Citations omitted.]

In determining whether state regulation has been preempted by federal action, "the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred

from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State." [Citations omitted.]

In determining whether the state has imposed an undue burden on interstate commerce, it must be borne in mind that the Constitution when "conferring upon Congress the regulation of commerce, \* \* \* never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it, within the meaning of the Constitution." [Citations omitted.] But a state may not impose a burden which materially affects interstate commerce in an area where uniformity of regulation is necessary. [Citations omitted.]

This leads us to a consideration of oil pollution regulation in light of provisions of the United States Constitution and federal statutes.

Nothing is contained in the United States Constitution which places exclusive jurisdiction over such matters in the United States. The only provision thereof referring directly to maritime matters is Article III, Sec. 2, which extends the judicial power of the "United States \* \* \* to all cases of admiralty and maritime jurisdiction." In addition, Art. I, Sec. 8, confers upon Congress the power to "make all laws which shall be necessary and

proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof. \* \* \*

An examination of the latest as well as the key federal statutes pertaining to oil pollution control and federal-state relations, the 1970 amendments to the Federal Water Pollution Control Act, is pertinent. A close evaluation of the Federal Water Pollution Control Act reveals that Congress did not intend to preclude state activity in the area; rather, to the contrary, state governments were encouraged to play the primary role of front-line, day to day combatant in the national fight for clean "maritime" water.

We first refer to the policy section of the Act, Section 1, which provides:

#### DECLARATION OF POLICY

Sec. 1. (a) The purpose of this Act is to enhance the quality and value of our water resources and to establish a national policy for the prevention, control, and abatement of water pollution.

(b) In connection with the exercise of jurisdiction over the waterways of the Nation and in consequence of the benefits resulting to the public health and welfare by the prevention and control of water pollution, it is hereby declared to be the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of the States in preventing and controlling water pollution, to support and aid technical research relating to the preven-

*tion and control of water pollution, and to provide Federal technical services and financial aid to State and interstate agencies and to municipalities in connection with the prevention and control of water pollution. The Secretary of Health, Education, and Welfare (hereinafter in this Act called "Secretary") shall administer this Act through the Administration created by section 2 of this Act, and with the assistance of an Assistant Secretary of Health, Education, and Welfare designated by him, shall supervise and direct the head of such Administration in administering this Act. Such Assistant Secretary shall perform such additional functions as the Secretary may prescribe.*

*(c) Nothing in this Act shall be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States. (Emphasis supplied.)*

Turning to the specific sections of the Federal Water Pollution Control Act, concerning oil pollution, Sec. 11(o), provides:

*(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly-owned or privately-owned property resulting from a discharge of any oil or from the removal of any such oil.*

*(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil into any waters within such State.*

*(3) Nothing in this section shall be con-*



strued as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this Act or any other provision of law, or to affect any State or local law not in conflict with this section.\* (Emphasis supplied.)

Taken together, these statutes set forth clearly a federal-state relationship within the area of oil pollution control on navigable waters which contemplates that state oil pollution statutes existing prior to the enactment of the Water Quality Improvement Act of 1970, such as Washington's, or enacted subsequent thereto, such as Florida's, should remain in effect. That Congress intended such a conclusion, we refer to the following language of the Conference Committee Report accompanying the Water Quality Improvement Act of 1970:

Paragraph (2) of subsection (o) disclaims any intention of preempting any State or political subdivision from imposing any requirement or liability with respect to the discharge of oil into waters in that State. *Thus, any State would be free to provide requirements and penalties similar to those imposed by this section or additional requirements and penalties.* These, however, would be separate and independent from those imposed by this section and would be enforced by the States through its courts. (Emphasis supplied.)

House Report, H.R. 91-940 to accompany H.R. 4148, 91st Congress, 2d Session, March 24, 1970, p. 42

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\*None of the amendments to the Federal Water Pollution Control Act pending presently in a conference committee considering S. 2770 and H.R. 11896 modifies the above-quoted portions of that act.



## II. Congress Is Empowered To Determine When State Statutes May Operate In The Area Of Maritime Law.

In arriving at its holding the lower court placed heavy reliance on the cases of *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917), and *Knickerbocker Ice Company v. Stewart*, 253 U.S. 149 (1920).

The major teaching of the *Jensen* case is that where the subject for regulation is national in character, there is a uniformity requirement in maritime law which precludes state action in two situations: 1—where state action conflicts with acts of Congress; and 2—where state action contravenes general maritime law. The case also teaches that when a subject which relates to maritime matters is local in character, then there is room for states to legislate and regulate, effectively. But see *Standard Dredging Company v. Murphy*, 319 U.S. 306 (1942). See also *Romero v. International Terminal Operating Company*, 358 U.S. 354, 373 (1958).

The next issue relates to who determines when a matter, although maritime in nature, is subject to state regulatory legislation. The *Knickerbocker* case, *supra*, may say that while the federal courts can make such determinations Congress cannot. If this is correct, the doctrine of the *Knickerbocker* case is unhealthy and should not be continued. In our view, Congress has the authority to determine when state regulation becomes unduly burdensome

to the maritime policy of harmony and uniformity. Indeed Congress is better equipped generally than the courts to investigate the effects of state regulation on maritime commerce and strike a balance with particularized state interests. This is specially true, we submit, when the local interest is in an area, such as the environmental protection, where issues relating to the attainment of high quality living conditions are involved.

If Congress has the power to develop the appropriate relationships between the federal government and the states in the area of water pollution control and maritime regulation, as we suggest it has, then that relationship has been established under the present provisions of the Federal Water Pollution Control Act. And as discussed earlier, the relationships under that Act contemplate that state statutes dealing with oil pollution control, such as Florida's and Washington's, are not only contemplated but effective under federal law.

### CONCLUSION

This case raises serious issues of federalism involving policies of uniform national rules for protection of waterborne shipping interests and of interstate commerce and the aspirations of states, through the exercise of police powers, to shape their futures around natural environments of high quality. The stakes in our national effort to protect the natural environment are too great to remove the states from

a position of direct influence unless the Constitution demands clearly that result. When a state, such as Washington, enacts an arsenal of environmental protection tools in an attempt to bring about for its citizens a high quality environment, possibly higher than those attainable or provided under federal policy, that state should not be squelched in its efforts in the name of an unclear policy of uniformity developed from a blurry past.

The clear intent of the latest Congressional acts pertaining to water pollution control, including pollution from oil, is the establishment of a joint and closely coordinated effort by the Federal Government and the states which combines the best talents of both.

Under this national program, state statutes, such as those of Florida, are valid; indeed essential.

Respectfully submitted,

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June, 1972

## APPENDIX A

### REVISED CODE OF WASHINGTON (RCW 90.48.315 et seq.) WASHINGTON'S OIL POLLUTION CONTROL LAWS

90.48.315 DISCHARGE OF OIL INTO WATERS OF THE STATE. DEFINITIONS. For purposes of RCW 90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907 the following definitions shall apply unless the context indicates otherwise:

(1) "Board" shall mean the pollution control hearings board.

(2) "Department" shall mean the department of ecology.

(3) "Director" shall mean the director of the department of ecology.

(4) "Discharge" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(5) "Fund" shall mean the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

(6) "Haying control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil

into the waters of the state, and shall specifically include carriers and bailees of such oil.

(7) "Oil" or "oils" shall mean oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, or any other petroleum related product.

(8) "Person" shall mean any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever and any owner, operator, master, officer, or employee of a ship.

(9) "Ship" shall mean any boat, ship, vessel, barge, or other floating craft of any kind.

(10) "Waters of the state" shall include lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington. [1971 1st ex.s. c 180 § 1; 1970 ex.s. c 88 § 1; 1969 ex.s. c 133 § 10.]

SEVERABILITY—1969 1st ex.s. c 133: "If any provision of this 1969 act or the application thereof to any person or circumstance is held invalid, this 1969 act can be given effect without the invalid provision or application; and to

this end the provisions of this 1969 act are declared to be severable. This 1969 act shall be liberally construed to effectuate its purpose." [1969 1st ex.s. c 133 § 12.] This applies to RCW 90.48-.315 through 90.48.363.

90.48.320 ————— UNLAWFUL FOR OIL TO ENTER WATERS—EXCEPTIONS. It shall be unlawful, except under the circumstances hereafter described

in this section, for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore whether publicly or privately operated, regardless of the cause of the entry or fault of the person having control over the oil, or regardless of whether it be the result of intentional or negligent conduct, accident or other cause. This section shall not apply to discharges of oil in the following circumstances:

(1) The person discharging was expressly authorized to do so by the water pollution control commission prior to the entry of the oil into state waters;

(2) The person discharging was authorized to do so by operation of law as provided in RCW 90.48.200;

(3) Where a person having control over the oil can prove that a discharge was caused by:

(a) an act of war or sabotage, or

(b) negligence on the part of the United States government, or the state of Washington. [1970 1st ex.s. c 88 § 2; 1969 ex.s. c 133 § 1.]

90.48.325 ———OBLIGATION TO COLLECT AND REMOVE OR CONTAIN, TREAT AND DISPERSE AFTER ENTRY. DIRECTOR TO PROHIBIT HARMFUL DISPERSANTS. It shall be the obligation of any person owning or having control over oil entering waters of the state in violation of RCW 90.48.320 to immediately

collect and remove the same. If it is not feasible to collect and remove, said person shall take all practicable actions to contain, treat and disperse the same. The director shall prohibit or restrict the use of any chemicals or other dispersant or treatment materials proposed for use under this section whenever it appears to him that use thereof would be detrimental to the public interest. [1970 1st ex.s. c 88 § 3; 1969 ex.s. c 133 § 2.]

90.48.330 ————COMMISSION MAY INVESTIGATE, REMOVE, CONTAIN, TREAT OR DISPERSE OIL DISCHARGED—LIMITATION—RECORD OF EXPENSES INCURRED. The water pollution control commission is authorized, with the staff, equipment and material under its control, or by contract with others, to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat, or disperse oil discharged into waters of the state. The director of the commission shall keep a record of all necessary expenses incurred in carrying out any project or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized. The authority granted hereunder shall be limited to projects and activities which are designed to protect the public interest or public property. [1970 1st ex.s. c 84 § 4; 1969 ex.s. c 133 § 3.]

90.48.335 ————LIABILITY FOR EXPENSES INCURRED BY COMMISSION. Any person who fails to



immediately collect, remove, contain, treat or disperse or when under an obligation to do so as provided in RCW 90.48.335, shall be responsible for the necessary expenses incurred by the state in carrying out a project or activity authorized under RCW 90.48.330. [1970 1st ex.s. c 88 § 5; 1969 ex.s. c 133 § 4.]

90.48.336 ————STRICT LIABILITY OF OWNER OR CONTROLLER OF OIL FOR DAMAGES TO PERSONS OR PROPERTY—EXCEPTIONS. Any person owning oil or having control over the same which enters the waters of the state in violation of RCW 90.48.320 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry. In any action to recover such damages, said person shall be relieved from strict liability, without regard to fault, if he can prove that the oil to which the damages relate entered the waters of the state by causes set forth in RCW 90.48.320(3). [1970 1st ex.s. c 88 § 6.]

90.48.338 ————OTHER PERSONS CAUSING ENTRY OF OIL DIRECTLY LIABLE TO STATE FOR CLEANUP EXPENSES—CAUSE OF ACTION BY PERSONS LIABLE UNDER RCW 90.48.325 AND 90.48.350 AGAINST OTHERS. In addition to any cause of action the state may have to recover necessary expenses for the cleanup of oil pursuant to RCW 90.48.325 and 90.48.350, any other person causing the entry of oil shall be directly liable to the state for the necessary expenses of oil cleanup arising from such entry and the state

shall have a cause of action to recover from any or all of said persons. Any person liable for cost of oil cleanup as provided in RCW 90.48.325 and 90.48.350 shall have a cause of action to recover for costs of cleanup from any other person causing the entry of oil into the waters of the state including any amount recoverable by the state as necessary expenses under RCW 90.48.350. [1970 1st ex.s. c 88 § 7.]

90.48.340 ————COMMISSION INVESTIGATION OF CIRCUMSTANCES OF ENTRY—ORDER FOR REIMBURSEMENT OF EXPENSES INCURRED BY COMMISSION—MODIFICATION—ACTION TO RECOVER—"NECESSARY EXPENSES". The director shall investigate each activity or project conducted, under RCW 90.48.330 to determine, if possible, the circumstances surrounding the entry of oil into waters of the state and the person or persons allowing said entry or responsible for the act of acts which result in said entry. Whenever it appears to the director, after investigation, that a specific person or persons are responsible for the necessary expenses incurred by the state pertaining to a project or activity as specified in RCW 90.48.335, the director shall notify said person or persons by appropriate order: *Provided*, That no order may be issued pertaining to a project or activity which was completed more than five years prior to the date of the proposed issuance of the order. Said order shall state the findings of the director, the amount of necessary expenses incurred

by the commission in conducting the project or activity, and a notice that said amount is due and payable immediately upon receipt of said order. The commission may, upon application from the recipient of an order received within thirty days from the receipt of the order, reduce or set aside in its entirety the amount due and payable, when it appears from the application, and from any further investigation the commission may desire to undertake, that a reduction or setting aside is just and fair under all the circumstances. If the amount specified in the order issued by the director notifying said person or persons is not paid within thirty days after receipt of notice imposing the same, or if an application has been made within thirty days as herein provided and the amount provided in the order issued by the commission subsequent to such application is not paid within fifteen days after receipt thereof, the attorney general, upon request of the director, shall bring an action on behalf of the state in the superior court of Thurston county or any county in which the person to which the order is directed does business to recover the amount specified in the final order of the director or the commission, as appropriate. No order issued under this section shall be construed as an order within the meaning of RCW 90.48.135. In any action to recover necessary expenses as herein provided said person shall be relieved from liability for necessary expenses if he can prove that the oil to which the

necessary expenses relate entered the waters of the state by causes set forth in RCW 90.48.320(3). For purposes of this section "necessary expenses" shall not include expenses relating to investigation or the performance of surveillance. [1970 1st ex.s. c 88 § 10; 1969 ex.s. c 133 § 5.]

**90.48.343 ————PERMIT REQUIRED PRIOR TO DISCHARGE—AUTHORITY OF DIRECTOR.** Any person who proposes to discharge oil or cause or permit the entry of same into waters of the state shall prior to such discharge obtain permission from the director of the water pollution control commission. The director is authorized to permit the discharge of oil into waters of the state consistent with the pertinent effluent and receiving water standards and treatment requirements established by the commission. Permission for industrial or commercial discharges shall be given through the terms of a waste discharge permit issued pursuant to RCW 90.48.180. Permission shall be given in all other cases on a form prescribed by the director. [1970 1st ex.s. c 88 § 8.]

**90.48.345 ————RULES AND REGULATIONS.** The commission shall adopt such rules and regulations as it deems necessary and proper for the purpose of carrying out the provisions of RCW 90.48.315 through 90.48.365. [1969 1st ex.s. c 133 § 6.]

**90.48.350 ————PENALTY FOR VIOLATION—MITIGATION—ACTION TO RECOVER—DISPOSITION OF PENALTIES RECOVERED.** Any person who intention-

ally or negligently discharges oil, or causes or permits the entry of the same, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to twenty thousand dollars for every such violation; said amount to be determined by the director of the commission after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of chapter 90.48 RCW, and such other considerations as the director deems appropriate. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the director of the commission describing such violation with reasonable particularity and advising such person that the penalty is due. The director may, upon written application therefor, received within fifteen days, and when deemed in the best interest of the state in carrying out the purposes of this chapter, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as he in his discretion shall deem proper, and shall have the authority to ascertain the facts upon all such applications in such manner and under such regulations as he may deem proper. If the amount of such pen-

alty is not paid to the commission within fifteen days after the receipt of notice imposing the same, or if an application for remission or mitigation has been made within fifteen days as herein provided and the amount provided in the order issued by the director subsequent to such application is not paid within fifteen days after the receipt thereof, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or any other county in which such violator may do business, to recover the amount specified in the final order of the director. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund. No order issued under this section shall be construed as an order within the meaning of RCW 90.48.135. [1970 1st ex.s. c 88 § 9; 1969 ex.s. c 133 § 7.]

90.48.355 ————RIGHT OF ENTRY, ACCESS TO RECORDS, PERTINENT TO COMMISSION INVESTIGATIONS. The commission, through its duly authorized representatives, shall have the power to enter upon any private or public property, including the boarding of any ship, at any reasonable time, and the owner, managing agent, master or occupant of such property shall permit such entry for the purpose of investigating conditions relating to violations or

possible violations of RCW 90.48.315 through 90.48.365, and to have access to any pertinent records relating to such property, including but not limited to operation and maintenance records and logs: *Provided*, That in connection with the authority granted herein no person shall be required to divulge trade secrets or secret processes. [1969 1st ex.s. c 133 § 8.]

90.48.360 —————DUTY TO NOTIFY COMMISSION OFFICE OF DISCHARGE—EXCEPTION. It shall be the duty of any person discharging oil or otherwise causing, permitting, or allowing the same to enter the waters of the state, unless the discharge or entry was expressly authorized by the commission prior thereto or authorized by operation of law under RCW 90.48.200, to immediately notify the water pollution control commission at its office in Olympia, or a regional office thereof, of such discharge or entry. [1969 1st ex.s. c 133 § 9.]

90.48.365 —————COMMISSION POWERS HEREUNDER SUPPLEMENTAL—EFFECT. RCW 90.48.315 through 90.48.365 shall grant authority to the water pollution control commission which is supplemental to and in no way reduces or otherwise modifies the powers heretofore granted to the water pollution control commission, except as it may directly conflict therewith. [1969 1st ex.s. c 133 § 11.]

90.48.370 DEPARTMENTAL POWERS AND DUTIES AS EXERCISE OF STATE POLICE POWER—EXTENSION



TO ALL WATERS WITHIN STATE. The powers, duties, and functions conferred by RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907 shall be exercised by the department of ecology and shall be deemed an essential government function in the exercise of the police power of the state. Such powers, duties, and functions of the department and those conferred by RCW 90.48.315 through 90.48.365 shall extend to all waters within the boundaries of the state. [1971 1st ex.s. c 180 § 2.]

90.48.380 RULES AND REGULATIONS—SCOPE. The department may adopt rules and regulations including but not limited to the following matters:

(1) Procedures and methods of reporting discharges and other occurrences prohibited by RCW 90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907;

(2) Procedures, methods, means, and equipment to be used by persons subject to regulations by RCW 90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907 and such rules and regulations may prescribe the times, places and methods of transfer of oil;

(3) Coordination of procedures, methods,

means, and equipment to be used in the removal of oil pollutants;

(4) Development and implementation of criteria and plans to meet oil pollution occurrences of various kinds and degrees;

(5) The establishment from time to time of control districts comprising sections of the state coast and the establishment of rules and regulations to meet the particular requirements of each such district;

(6) Such other rules and regulations as the exigencies of any condition may require or such as may be reasonably necessary to carry out the intent of RCW 90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907. [1971 1st ex.s. c 180 § 3.]

**90.48.390 COASTAL PROTECTION FUND—MONEYS CREDITED TO—USE.** The coastal protection fund is established to be used by the department as a revolving fund for carrying out the purposes of RCW 90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907. To this fund there shall be credited penalties, fees, and charges received pursuant to the provisions of RCW 90.48.315 through 90.48.365 and an amount equivalent to one cent per gallon from each marine use refund claim under RCW 82.36.330.

Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its powers, duties, and functions under RCW 90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907 shall be deposited with the state treasurer to the credit of the fund and may be invested in such manner as is provided for by law. Interest received on such investment shall be credited to the fund. [1971 1st ex.s. c 180 § 4.]

90.48.400 ———DISBURSAL OF MONEYS FROM. (1) Moneys in the coastal protection fund shall be disbursed for the following purposes and no others:

(a) All costs of the department related to the enforcement of RCW 90.48.315 through 90.48.365 and RCW 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907 including but not limited to equipment rental and contracting costs.

(b) All costs involved in the abatement of pollution related to the discharge of oil.

(c) The director may allocate a portion of the fund to be devoted to research and development in the causes, effects, and removal of pollution caused by the discharge of oil.

(2) Moneys disbursed from the coastal protection fund for the abatement of pollution caused

by the discharge of oil shall be reimbursed to the fund whenever:

(a) Moneys are available under any federal program; or

(b) Moneys are available from a recovery made by the department from the person liable for the discharge of oil. [1971 1st ex.s. c 180 § 5.]